

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
DEC 17 2009
S. J. F. CLERK

MATT ONNEN, and UNITED STATES * CIV 07-4174
ex rel. MATT ONNEN, *

Plaintiffs,

-VS-

ORDER REGARDING NEW AUTHORITY

SIOUX FALLS INDEPENDENT SCHOOL DISTRICT #49-5, a local government agency, and DARIN DARBY, DEANNA BARTH, KENT ALBERTY, DEBBIE HOFFMAN and DOUG MORRISON, the duly elected, qualified, and acting Members of the Sioux Falls School Board, individually and in their official capacities, and PAMELA HOMEN, the duly appointed qualified, and acting Superintendent of Schools of the Sioux Falls Independent School District, in her individual and official capacities,

Defendants.

Pending before the Court is a Request for the Court to Take Notice of New Authority, doc. 57, filed by the defendants, Sioux Falls Independent School District #49-5, Darin Darby, Deanna Barth, Kent Alberty, Debbie Hoffman, Doug Morrison and Pamela Homan (collectively, “Defendants”).

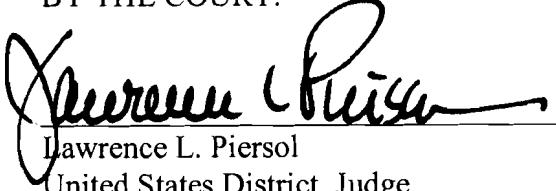
The Court read the case submitted by Defendants, *Hopper v. Solvay Pharmaceuticals, Inc.*, 2009 WL 4429519 (11th Cir. Dec. 4, 2009). The relators in *Hopper* failed to allege any connection between the defendant's false statements and the government's decision to pay amounts it did not owe, and the complaint was dismissed for failing to plead fraud with particularity. The Eleventh

Circuit affirmed, noting that the relator in *Hopper* did not identify any specific false claims that were presented to the government, did not identify any person or entity who submitted a claim, and did not allege that the defendant intended for the government to rely on a false statement or record in deciding whether to pay claims. Defendants assert that *Hopper* supports their argument that Plaintiff, Matt Onnen, cannot overcome the pleading requirement of Federal Rule of Civil Procedure 9(b). The Court does not agree. Onnen alleges that Defendants obtained eligibility for Higher Education Act funds under false pretenses and without complying with the Program Participation Agreement for Southeast Technical Institute. For the reasons stated by the Court in the Memorandum Opinion and Order, Onnen has met the Rule 9(b) pleading requirements. Accordingly,

IT IS ORDERED that *Hopper v. Solvay Pharmaceuticals, Inc.*, 2009 WL 4429519 (11th Cir. Dec. 4, 2009), is inapplicable in this case.

Dated this 18-day of December, 2009.

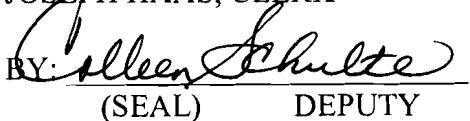
BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK



BY: Colleen Schulte
(SEAL) DEPUTY